

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1311V

Filed: July 13, 2018

UNPUBLISHED

JULIA WADE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Attorneys' Fees and Costs

*Ann Mayhew Golski, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.  
Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for respondent.*

## DECISION ON ATTORNEYS' FEES AND COSTS<sup>1</sup>

**Dorsey**, Chief Special Master:

On September 22, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the "Vaccine Act"). Petitioner alleges that she sustained a shoulder injury related to vaccine administration ("SIRVA") caused by the influenza ("flu") vaccine she received on September 29, 2016. Petition at 1-2. On May 15, 2018, the undersigned issued a decision awarding compensation to petitioner based on the respondent's proffer. (ECF No. 29).

On June 28, 2018, petitioner filed a motion for attorneys' fees and costs. (ECF No. 34). Petitioner requests attorneys' fees in the amount of \$20,546.20 and attorneys'

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "\$" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

costs in the amount of \$751.83. *Id.* at 1-2. In compliance with General Order #9, petitioner filed a signed statement indicating that petitioner incurred no out-of-pocket expenses. *Id.* at 2. Thus, the total amount requested is \$21,298.03.

Respondent has filed no response.

The undersigned has reviewed the billing records submitted with petitioner's request. In the undersigned's experience, the request appears reasonable, and the undersigned finds no cause to reduce the requested hours or rates, with the following exception.

Upon review of the billing records submitted, it appears that a number of entries are for tasks considered clerical or administrative overhead. It is clearly established that secretarial work "should be considered as normal overhead office costs included within the attorneys' fee rates." *Rochester v. U.S.*, 18 Cl. Ct. 379, 387 (1989); *Dingle v. Sec'y of Health & Human Servs.*, No. 08-579V, 2014 WL 630473, at \*4 (Fed. Cl. Spec. Mstr. Jan. 24, 2014). "[B]illing for clerical and other secretarial work is not permitted in the Vaccine Program." *Mostovoy*, 2016 WL 720969, at \*5 (citing *Rochester*, 18 Cl. Ct. at 387). A total of 0.90 hours<sup>3</sup> was billed by paralegals on tasks considered administrative including, opening and setting up client files, organizing documents and sending correspondence. For these reasons the undersigned **reduces the attorney's fees request in the amount of \$125.50.**<sup>4</sup>

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

**Accordingly, the undersigned awards the total of \$21,172.53<sup>5</sup> as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Ann Mayhew Golski. Petitioner requests check be forwarded to Maglio Christopher & Toale, PA, 1605 Main Street, Suite 710, Sarasota, Florida, 34236.**

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<sup>3</sup> Examples of these entries include: November 8, 2016 (0.2 hrs) "Open client file and create same." December 16, 2016, 2016 (0.20 hrs) "Receive and organize retainer packet." and July 13, 2017 (0.20 hrs) "Receive marriage license from client and save to file." These entries are merely examples and are not exhaustive.

<sup>4</sup> This amount consists of 0.5 hours at \$135 per hour and 0.4 hours at \$145 per hour.

<sup>5</sup> This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See generally *Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir. 1991).

The clerk of the court shall enter judgment in accordance herewith.<sup>6</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>6</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.